question at the hearing of the appeal, and the deputy public prosecutor on going through his papers stated that his colleague had in fact given his consent to the institution of the prosecution on 2nd June, 1952 — well in advance of the laying of the information. That assurance from the bar was accepted and it was held that there was a proper consent to the prosecution. The point went on appeal to the Court of Appeal as to whether the consent was effective in that the written consent was dated after the laying of information, and the Chief Justice in a short judgment upheld the appellate judge's decision.

Conclusion

Our answers to the three questions posed are therefore as follows:

1(a)

Where an accused is charged for an offence under the Prevention of Corruption Act, 1961, in addition or alternatively to a prescribed offence, a consent required by section 26 of the Act is sufficient if it authorizes the prosecution of the accused only for an offence under the Act. The consent of the Public Prosecutor or his Deputy is not required when the accused is charged with a prescribed offence.

1(b)

This question does not arise.

2 A prosecution under the Act is instituted when the accused is called upon to plead to the charge.

3 If no consent is available and no deputy public prosecutor is present at the time when an accused person is called upon to plead to an offence under the Act, the consent of the deputy public prosecutor given subsequently does not constitute sufficient consent for the prosecution within the meaning of section 26.

Azmi L.P. and **Gill F.J.** concurred.

Order accordingly.

LIANG TAI TRADING COMPANY LTD. v. TOH THYE GUAN

[O.C.J. (Choor Singh J.) September 4, 1970]

[Singapore — Suit No. 98 of 1968]

Bills of Exchange — Claim on cheque — Post-dated cheque given in payment of antecedent debt — Whether post-dated cheque negotiable — Whether endorsement required when cheque crossed generally — Meaning of "holder in due course" — Bills of Exchange Ordinance, 1949, s. 29 — Valuable consideration — Meaning of — Bills of Exchange Ordinance, 1949, s. 13(2).

The plaintiffs received from a third party in payment to account of his debt a post-dated cheque drawn by the defendant. When presented for payment the cheque was dishonoured as the defendant had before the due date countermanded payment. The plaintiffs sued the defendant for the amount of the cheque of which they claimed to be holders in due course. The defendant denied that the plaintiffs were holders in due course. He said he had countermanded the cheque before it fell due for payment and that he was entitled to do so. He contended that the plaintiffs gave no valuable consideration for the transfer of the cheque to them.

Held: (1) the plaintiffs had given valuable consideration for the transfer of the cheque to them and this could be itemised under three heads:

(a) the cheque was received in partial payment of an antecedent debt and by virtue of the provisions of section 27(2) of the Bills of Exchange Ordinance, 1949, the presumption of valuable consideration was conclusive even though the cheque was post-dated;

(b) on receipt of the cheque the plaintiffs refrained from suing the third party for the debt due by him;

(c) on receipt of the cheque the plaintiffs not only refrained from suing the third party but also gave him further credit;

(2) both on the facts and the law, the plaintiffs were holders in due course of the cheque for $5,000 drawn by the defendant and as such they were entitled to recover from him as the drawer of the cheque the amount due on it.

CIVIL SUIT.

Lim Teow Gok for the plaintiffs.

J. B. Jeyaretnam for the defendant.

Cur. Adv. Vult.

Choor Singh J.: In this suit the plaintiffs' claim against the defendant is for $5,000 due on a cheque dated the 21st December 1966 and drawn by the defendant upon Chung Khiaw Bank Ltd. The said cheque was made out payable to "Lee Yeow Kuan or bearer" and the plaintiffs allege that "they became and are the bearers and holders in due course" of the said cheque which was on the 21st December 1966 duly presented for payment and was dishonoured because payment thereof had been countermanded by the defendant.

The defendant admits that he drew the said cheque but says that it was issued on the 26th November 1966 post-dated to the 21st December 1966 and made payable to the said Lee Yeow Kuan and crossed generally. The defendant denies that the plaintiffs became and are the bearers and holders in due course of the said cheque. The defendant admits that he countermanded payment on the said cheque but his contention is that he did so before it fell due for payment. The defendant alleges that the said cheque was handed to the said Lee Yeow Kuan on the 26th November 1966 for chickens to be supplied by him to the defendant before the 21st December 1966 and in consideration for the cheque Lee agreed to set aside at his farm chickens to the value of $5,000 exclusively for the defendant. The defendant says that he visited the said chicken farm on the 18th December 1966 and discovered that Lee had sold to a third party the chickens which he had agreed to set aside for the defendant; that thereupon he requested Lee to return the said cheque and informed him that unless the chickens agreed to be supplied by him were delivered or the said cheque was returned, he would stop payment on the said cheque; and that thereafter on the 20th December 1966 he countermanded payment on the said cheque. The defendant contends that under those circumstances he is not liable on the said cheque.

The plaintiffs say that they do not know anything about the dealings between Lee and the defendant and that they have no knowledge about the chicken transaction mentioned by the defendant. The plaintiffs say further that when they received the said cheque they

had no reason to suspect that it would be dishonoured because in the past they had received from Lee similar post-dated cheques drawn by the defendant and they had all been honoured when presented for payment. The plaintiffs are able to give particulars of five such cheques: —

6.9.66 cheque BT/LI 046707 dated 15.9.66 for $6,000
4.10.66 cheque BT/LI 049777 dated 20.10.66 for $8,000
28.10.66 cheque BT/LI 049824 dated 12.11.66 for $4,000
28.10.66 cheque BT/LI 049825 dated 21.11.66 for $4,000
15.11.66 cheque BT/LI 052703 dated 8.12.66 for $6,000

All these five cheques were drawn by the defendant in favour of "Lee Yeow Kuan or bearer" and all five were honoured when presented for payment.

The plaintiffs' case is that when they received the cheque in question they credited Lee in their books with $5,000 and treated the cheque as having been paid; that they do not know the defendant at all and never had any transactions with him; that they issued a receipt to Lee for $5,000 in respect of the said cheque; that having credited Lee with $5,000 in their books, Lee's debt to them was reduced by $5,000; and that after the receipt of the said cheque they gave further credit to Lee which they would not have done without the said cheque nor if they had known that the said cheque would be dishonoured.

A cheque is always *prima facie* negotiable unless it contains words prohibiting transfer or indicating an intention that it should not be transferable and in such case it is only valid as between the parties thereto. In the present case the cheque was made out payable to "Lee Yeow Kuan or bearer" and crossed. Such a cheque is negotiable simply by delivery, by virtue of the words "or bearer" and no endorsement is required. The simple crossing of the cheque in this case did not affect its negotiability. The drawing of two parallel transverse lines across the face of the cheque in question meant that the cheque was crossed generally and the holder of this cheque who desired payment of the cheque must present it through a banker.

In my opinion the plaintiffs' right to sue the defendant as the drawer of the cheque and recover from him the amount of the cheque depends on whether or not they are "holders in due course". This expression is defined in section 29 of the Bills of Exchange Ordinance, 1949, of Malaysia, which was extended to Singapore by Legal Notification No. 260 of 1965, as follows: —

29.(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely,

(a) that he became a holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Counsel for the defendant submits that the plaintiffs are not holders in due course because they gave no value for the cheque; that there was a debt due by Lee to the plaintiffs and Lee handed the cheque to the plaintiffs in payment to account of that debt; that the plaintiffs gave no consideration for taking the cheque; that Lee was merely attempting to make a part payment of his debt; that when the cheque was dishonoured, the paid portion of the debt was revived and Lee became liable for the full debt; that the plaintiffs are entitled to sue Lee for the full amount of the debt; that they have not given any consideration for the transfer of the cheque to them and that therefore they are not holders in due course.

Counsel for the plaintiffs submits that the plaintiffs took in good faith a cheque which was complete and regular on the face of it; that the fact that it was post-dated did not render it invalid or incomplete; that the previous transactions between the parties rendered it unnecessary for the plaintiffs to make enquiry because all previous post-dated cheques had been honoured; that the plaintiffs had no notice of renunciation; that there was a debt due from the negotiator Lee to the plaintiffs and he gave the cheque in partial settlement of this antecedent debt or liability; that when the plaintiffs received the cheque they credited Lee with $5,000 in accordance with the agreed practice and gave him a receipt for it; that thereupon Lee's debt was reduced by $5,000; that Lee was also given further credit after he handed this cheque for $5,000 to the plaintiffs; that if not for this cheque of $5,000 the plaintiffs would not have given further credit to Lee and thereby suffered further losses and that under these circumstances the plaintiffs clearly gave valuable consideration for the cheque.

Section 13(2) of the Bills of Exchange Ordinance, 1949, expressly provides that "a bill is not invalid by reason only that it is ante-dated or post-dated" and a whole series of cases established its validity and perfect capacity of negotiation between the real date of its issue and its ostensible date, and presumably for a reasonable time after that. See *Paget's* Law of Banking, 6th edition, page 176. The cheque in question, although post-dated, was nevertheless negotiable and it seems to me that the valuable consideration which the plaintiffs gave for the transfer of this cheque to them can be itemised under three heads: —

(a) the cheque was received in partial payment of an antecedent debt and by virtue of the provisions of section 27(2) of the Bills of Exchange Ordinance, 1949, the presumption of valuable consideration is conclusive even though the cheque was post-dated.

(b) On receipt of the cheque the plaintiffs refrained from suing Lee for the debt due by him.

(c) On receipt of the cheque the plaintiffs not only refrained from suing Lee but also gave him further credit.

In my opinion, both on the facts and the law, the plaintiffs are holders in due course of the cheque for

$5,000 drawn by the defendant and as such they are entitled to recover from him as the drawer of the said cheque the amount due on it. There will be judgment for the plaintiffs in the sum of $5,000 together with interest on the said sum at the rate of 6 per cent per annum from the date of the writ until today. The defendant will pay the plaintiffs' costs of this action as taxed.

Judgment for the plaintiff.

Solicitors: *Sim Teow Gok & Co.; J. B. Jeyaretnam & Co.*

ANG TIONG SENG v. GOH HUAN CHIR

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Chua JJ.) September 28, 1970]

[Singapore — Civil Appeal No. 14 of 1970]

Damages — Personal injuries — Arm — Amputation of left arm.

Negligence — Professional negligence — Chinese "sinseh" — Standard care and skill to be expected.

The plaintiff (respondent herein) claimed damages against the defendants (one of whom was the appellant herein) on the ground that the injuries sustained by him were caused by the negligence of the defendants. The plaintiff was at the relevant time a wharf labourer. He was walking along a plank one end of which was placed on a boat anchored in the Singapore River and the other end on the edge of the quay at Boat Quay. The first defendant drove a motor-lorry which collided against the plank. This caused the plaintiff to fall into the river and he sustained an injury on his left arm. After the accident he was taken to the third defendant (the appellant), a Chinese physician (a "sinseh"), for treatment of the injured arm. The third defendant applied some medicine to the arm and bandaged it. Three days later it became gangrenous and was amputated at the General Hospital. The plaintiff and the first two defendants arrived at a settlement and judgment by consent was entered in favour of the plaintiff. The only issue remaining to be tried was whether the third defendant was liable for negligence. The learned trial judge came to the conclusion that the third defendant was negligent in his treatment of the plaintiff's left arm and accordingly awarded $28,070 as damages to the plaintiff (of this amount $25,000 was for general damages). The third defendant appealed.

Held: dismissing the appeal, (1) the learned trial judge was right in finding that the loss of the plaintiff's left arm was caused by the negligent treatment given by the third defendant;

(2) the sum of $25,000 awarded by way of general damages was excessive. In this case the sum of $17,500 would be a fair amount to be awarded for general damages. The total amount of damages would therefore be reduced from $28,070 to $20,570.

COURT OF APPEAL.

Harry L. Wee (*R. E. Redrup* with him) for the appellant.

C. H. Chua for the respondent.

Cur. Adv. Vult.

Tan Ah Tah J. (delivering the judgment of the court): In this case the plaintiff claimed damages against the defendants on the ground that the injuries sustained by him were caused by the negligence of the defendants.

The plaintiff was at the relevant time a wharf labourer. He was walking along a plank one end of which was placed on a boat anchored in the Singapore River and the other end on the edge of the quay at Boat Quay. As he was walking along the plank the first defendant who was driving motor-lorry No SGA 1778 collided against the plank. This caused the plaintiff to fall from the plank into the river and he sustained an injury on his left arm. After the accident the plaintiff was taken to the third defendant, a Chinese physician (referred to in Hokkien as "sinseh"), practising at Lorong 15 Geylang, for treatment of his injured arm. The third defendant applied some medicine to the arm and bandaged it. Three days later the arm became gangrenous and was amputated at the General Hospital. The plaintiff's claim against the first defendant was that he drove his lorry so negligently that it caused him to fall from the plank resulting in the injury to his arm. His claim against the second defendant was in his capacity as the owner of the lorry and the employer of the first defendant and his claim against the third defendant was for negligent treatment of his arm which resulted in the arm becoming gangrenous whereupon it had to be amputated. The plaintiff and the first and second defendants arrived at a settlement and judgment by consent was entered in favour of the plaintiff against the first and second defendants for the sum of $1,000 and agreed costs in the sum of $350. The three defendants also agreed that as between themselves there was to be no order as to costs. The only issue remaining to be tried as between the plaintiff and the third defendant was the question whether the third defendant was liable for negligence. The learned trial judge came to the conclusion that the third defendant was negligent in his treatment of the plaintiff's left arm and accordingly awarded the sum of $28,070 by way of damages to the plaintiff as against the third defendant. It is against this decision that this appeal is now brought by the third defendant.

At the trial the plaintiff and the third defendant gave different versions of what happened during the plaintiff's visits to the third defendant. On these matters, the facts found by the learned trial judge were as follows. After the accident the plaintiff was taken by two of his fellow workers to the third defendant for treatment. The third defendant examined him and told him that he had sustained two or three fractures in his left arm and that the third defendant could cure him completely for a fee of $200. Arrangements were made for the payment of this fee and the plaintiff accepted the third defendant's offer to cure him completely. The third defendant thereupon tied three bamboo sticks to his arm, applied some medicine on the arm and finally bandaged it very tightly. The plaintiff was then sent home and told to come back again the next day. On the next day he felt severe pain in his arm and went with his wife to see the third defendant. He complained to the third defendant of severe pain. The third defendant told him that the pain would be even more severe on the third day. The third defendant then gave him two bottles of medicine for which he paid the sum of $6. He was told to see the third defendant on the next day. On the third day he